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§ 401.0 Introduction.

(a) The regulations in this part govern the process whereby the Commission will include projects in the Comprehensive Plan and extend them into an annual Water Resources Program. Also set forth herein are the procedures and definitions that the Commission will use in screening projects proposed by others to test their compatibility with the Comprehensive Plan. An interrelationship among these three requirements is apparent in the Delaware River Basin Compact.

(b) Article 13 of the Compact calls for the adoption of the Comprehensive Plan and Water Resources Program. These documents are defined as follows:

(1) *Comprehensive Plan.* A plan that includes all public and private projects and facilities which are required in the judgment of the Commission for optimum planning, development, conservation, use, management, and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is dynamic and will be periodically revised.

(2) *Water Resources Program.* An annual presentation, based upon the Comprehensive Plan, of the quantity and quality of water resources needs of the area to be served during the ensuing six years or for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects to be anticipated, together with a separate statement of the projects proposed to be undertaken by the Commission during such period.

(c) To protect the integrity of the Comprehensive Plan and avoid conflicts of jurisdiction, the Compact provides generally, in Article 11, for cooperative planning of all public projects, and more specifically, in section 3.8 of the Compact, confers certain regulatory authority upon the Commission. Section 3.8 provides for a review of water resources projects to determine two matters: First, whether the project will have “a substantial effect on the water resources of the basin;” and secondly, whether a project having such an effect would “substantially impair or conflict with the Comprehensive Plan.” The basic concept is thus both comprehensive and integrated planning and development.

(d) A project may enter the Comprehensive Plan in the discretion of the Commission whenever the project is ready for such action, both on its own merits and in relation to other projects which are part of the Plan. Subpart A of this part develops the concept of the Comprehensive Plan and the procedure to be followed for inclusion of new projects or modification of existing ones. The Water Resources Program represents a selection of projects by the Commission taken from the Comprehensive Plan. These are projects which the Commission recommends for

action during the ensuing six-year period. Procedures that the Commission will follow in developing the Water Resources Program are contained in Subpart B of this part.

(e) The regulatory power of the Commission under section 3.8 of the Compact extends to all public and private projects. However, since the Compact also provides for cooperative planning of public projects (Article 11), a special procedure to accelerate Commission approval of such projects is provided as part of the process of adoption of a Water Resources Program. As set forth in Subpart C of this part, the sponsor of a public project has a choice of routes for Commission approval: Where advance approval is necessary or desirable, the sponsor may secure approval through the process of project inclusion in the Water Resources Program; and this is an opportunity that will be available at a specified time each year. Where the sponsor may for any reason prefer the alternate course, the public project may be submitted for review under section 3.8 of the Compact. In brief, approval of a public project as ready for action within the Water Resources Program will have the effect of approval for purposes of section 3.8, but omission of a project from the Water Resources Program still leaves the door open for the project sponsor to proceed under section 3.8. Finally, under the regulations in this part private projects are required to proceed under section 3.8.

Subpart A—Comprehensive Plan

§ 401.1 Scope.

This subpart shall govern the submission, consideration and inclusion of projects into the Comprehensive Plan.

§ 401.2 Concept of the Plan.

(a) The Comprehensive Plan, as required in section 13.1 of the Compact, will provide for the immediate and long-range development and use of the water resources of the basin. The Plan will include all public and private projects and facilities which are required, in the judgment of the Commission, for the optimum planning, development, conservation, use, management and control of the water re-

sources of the basin, in light of present and foreseeable future needs. It will consist of statements of policy, criteria and standards, as well as the principal physical projects, objectives and programs that will be involved in the development of the river basin.

(b) The Plan will be a body of documents expressing a systematic set of policies and programs for the future, and the means for carrying them out. It will be expressed through narrative text, maps, charts, schedules, budgets and other means.

(c) From time to time specific projects and facilities and programs may be incorporated, deleted, or modified to reflect changing conditions, research results and new technology. At any given time the degree of detail describing particular projects will vary depending upon the state of their development.

§ 401.3 Other agencies.

For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the signatory parties to the Compact, Federal, State and local agencies shall follow the requirements of Article 11 of the Compact.

NOTE: As to Federal agencies, the Compact provides: "No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the Commission in the Comprehensive Plan."

As to State and local agencies, the Compact provides: "No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility unless it shall have first been included by the Commission in the Comprehensive Plan."

As to Federal, State and local agencies, the Compact provides: "The planning of all projects related to powers delegated to the Commission by this Compact shall be undertaken in consultation with the Commission * * * Each * * * "agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority except as specifically provided by this section."

§ 401.4 Amendments and revisions.

The Comprehensive Plan will be open, upon application of any interested party, for review and inclusion of new projects and for deletion or alteration of previously included projects. To this end, the Commission will receive and consider proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization or group. Any such proposal shall be submitted in such form as may be required by the Executive Director to facilitate consideration by the Commission and shall include at least the following information:

- (a) Purpose or purposes, including quantitative measures of physical benefits anticipated from the proposal.
- (b) Approximate location, dimensions (if a structural project) and land area required.
- (c) Draft or description of a proposed standard, policy or other non-structural measure.
- (d) Forecast of the cost (if structural) or effect on the utilization of water resources (if a non-structural measure).
- (e) Relation to other parts of the existing Comprehensive Plan.
- (f) A description of the construction procedures to be followed in excavating, backfilling, retention of sediment, reseedling and landscaping, all with particular reference to minimizing soil erosion and sedimentation in the stream.

§ 401.5 Review of proposal.

Following staff study, examination and review of each proposal, the Commission will take such action on the proposal as may be appropriate, and will hold such public hearings thereon as are required by the Compact.

§ 401.6 Further action.

The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan (Phase I, March 28, 1962). The amendments, additions and deletions will be compiled and the Plan as so revised will be republished annually.

§ 401.7 Public projects under Article 11 of the Compact.

(a) After a project of any Federal, State or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and these regulations. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of the regulations in this part.

(b) Any project not having a substantial effect on the water resources of the basin, as defined in Subpart C of this part, may proceed without reference to Article 11 of the Compact.

§ 401.8 Custody and availability.

The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, descriptions and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

Subpart B—Water Resources Program

§ 401.21 Scope.

This subpart shall govern the submission, consideration and inclusion of projects into the Water Resources Program.

§ 401.22 Concept of the Program.

The Water Resources Program, as defined and described in section 13.2 of

the Compact, will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action within the ensuing six-year period. That part of the Program consisting of a presentation of the water resources needs of the basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

§ 401.23 Procedure.

Each project included in the Water Resources Program shall have been previously included in the Comprehensive Plan, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. The project's sponsor shall furnish the following information prior to the inclusion of the project in the Water Resources Program:

- (a) The Comprehensive Plan data brought up-to-date for the period of the Water Resources Program.
- (b) Specific location and dimension of a structural project, and specific language of a standard, policy or other non-structural proposal.
- (c) The plan of operation of a structural project.
- (d) The specific effects of a non-structural project.
- (e) Sufficient data to indicate a workable financial plan under which the project will be carried out.
- (f) A timetable for implementation.

§ 401.24 Preparation and adoption.

The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects required to satisfy the basin needs during the period covered by the Program may be classified as follows:

- (a) *"A" list*. This shall include public projects which require no further review, and inclusion in such list shall be deemed to be approved for the purposes of section 3.8 of the Compact.
- (b) *"B" list*. This shall include public projects not included in the "A" list and privately sponsored projects which are proposed or anticipated by the Commission.

§ 401.25 Alternatives for public projects.

Any public project which has been included in the Comprehensive Plan but is not on the "A" list of the current Water Resources Program, at the option of the sponsor, may be submitted for review and approval under section 3.8 of the Compact in accordance with Subpart C of this part.

§ 401.26 Inventory of other projects.

Each Water Resources Program will include, for information purposes only, an inventory of projects approved during the previous year pursuant to section 3.8 of the Compact but which are not part of the Comprehensive Plan or Water Resources Program.

Subpart C—Project Review Under Section 3.8 of the Compact

§ 401.31 Scope.

This subpart shall govern the submission and review of projects under section 3.8 of the Delaware River Basin Compact.

§ 401.32 Concept of 3.8.

Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the Compact provides:

No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

§ 401.33 Administrative agreements.

The Executive Director is authorized and directed to enter into cooperative

Administrative Agreements with Federal and State regulatory agencies concerned with the review of projects under Federal or State law as follows:

(a) To facilitate the submission and review of applications and the determinations required under section 3.8 of the Compact.

(b) To avoid unnecessary duplication of staff functions and hearings required by law.

(c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law.

(d) Provided that any such Administrative Agreement shall be effective solely for purposes of intergovernmental cooperation and the failure of any applicant to comply with the provisions of any such agreement shall not prejudice his application or the consideration thereof.

§ 401.34 Submission of project required.

Any project which may have a substantial effect on the water resources of the basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to whether the project will have a substantial effect on the water resources of the basin and, if so, whether the project impairs or conflicts with the Comprehensive Plan, as follows:

(a) Where the project is subject to review by a State or Federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other State or Federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal which may have a substantial effect on the water resources of the basin may be received and reviewed by the staff informally in conference with the project sponsor

during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A" list classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approval for the purposes of section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission: *Provided, however,* That this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a State or Federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the basin and is not required to be submitted under section 3.8 of the compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons.

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any calendar month does not exceed 100,000 gallons.

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any calendar month does not exceed 100,000 gallons.

(4) The construction of new municipal sewage treatment facilities or alteration or addition to existing municipal sewage treatment facilities when

the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems.

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials.

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles.

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state.

(8) Periodic maintenance dredging.

(9) Encroachments on streams within the basin caused by:

(i) Floating docks and anchorages and buoys and navigational aids.

(ii) Temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures.

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project areas shown in the Comprehensive Plan.

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant

disturbance of ground cover affecting water resources.

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as shown in the Comprehensive Plan, unless such lines would involve significant disturbance of ground cover affecting water resources.

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as shown in the Comprehensive Plan, or in, on, under or across any stream within the basin, unless such lines would involve significant disturbance of ground cover affecting water resources.

(14) Landfill projects limited to disposal of solid inert wastes such as earth, rock, gravel, concrete, asphalt paving fragments, glass, plaster, plasterboard, rubber products, steel mill slag, clay, clay products, plastics, asbestos shingles, and similar materials, unless such projects are located on flood plains delineated by the Commission or a signatory State.

(15) Landfill projects which may contain organic or liquid wastes that have a substantial effect on water resources of the Basin, unless, no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state-level review are not adequate to protect the waters of the Basin for the purposes prescribed in the Comprehensive Plan.

(16) Draining, filling, or otherwise altering marshes or wetlands when the area affected is less than 25 acres: *Provided, however*, That areas less than 25 acres shall be subject to Commission review and action (i) where neither a State nor a Federal level review and permit system is in effect, and the Executive Director determines that a

project is of major regional or interstate significance requiring action by the Commission, or (ii) when a Commissioner or the Executive Director determines that the final action of a State or Federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the basin. In the case of a project affecting less than 25 acres for which there has been issued a State or Federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the chairman, may at any time within the 30-day period inform any permit holder, signatory party, or other interested party that the Commission will decline to undertake review and action concerning any such project.

(17) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons.

(18) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater.

(19) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons.

(b) All other projects which have or may have a substantial effect on the water resources of the basin shall be submitted to the Commission in accordance with the regulations in this part for determination as to whether the project will have a substantial effect on the water resources of the basin and, if so, whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

- (1) Impoundment of water.
- (2) Withdrawal of ground water.
- (3) Withdrawal of water from impoundment or streams.
- (4) Diversion of water into or out of the basin.

(5) Deepening or widening of existing stream beds, channels, anchorages, harbors or turning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat.

(6) Discharge of pollutants into waters of the basin.

(7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines.

(8) Facilities for the direct discharge to surface or ground waters of industrial wastewater.

(9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries.

(10) Change in land cover on major groundwater infiltration areas.

(11) Hydroelectric power projects, including pumped storage projects.

(12) Projects or facilities of Federal, State and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the basin.

(13) Draining, filling or otherwise altering marshes or wetlands.

(14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act.

(15) Landfills and solid waste disposal facilities affecting the water resources of the Basin.

(16) State and local standards of flood plain regulation.

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period.

(18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Whenever a State or Federal agency determines that a project falling within an excluded classification

(as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the basin, such project may be referred by the State or Federal agency to the Commission for action under the regulations in this part.

(d) Except as otherwise provided by §401.40 the sponsor shall submit an application for review and approval of a project included under paragraph (b) of this section through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party. The Executive Director will thereupon determine for the Commission whether or not the proposed project could have a substantial effect upon the water resources of the basin within the meaning of the Compact and the Rules of Practice and Procedure. In making such determination the Executive Director shall be guided by his findings as to the following factors:

(1) The impact of the project on environmentally sensitive land areas or species of plant or animal life.

(2) The potential of the project and its distribution or collection systems to induce significant changes in numbers, distribution or character of population or economic activity.

(3) The magnitude of proposed water withdrawal or waste discharge in relation to minimum streamflow, aquifer yield or water quality.

(4) The size of the project and distribution or collection system and areal extent and duration of its environmental impact.

(5) The effect of the project on public health, safety or general welfare, and historic and cultural properties.

(6) The effect of the project on surface or groundwaters in another state.

(7) The effect of the project on transfers of water into or out of the basin or from one sub-basin to another.

(8) The cost of the project and nature and magnitude of resources required for its implementation.

(9) The effect of the project on flood flows and storm water runoff.

(10) Any other facts which in a particular case may be relevant to the protection of the integrity of the Comprehensive Plan.

(11) The impact of the project on aquatic life including fisheries.

(e) Projects determined by the Executive Director to have a substantial effect will be subject to approval by the Commission pursuant to section 3.8 and Article 11 of the Compact (to the extent applicable). Projects determined by the Executive Director not to have a substantial effect on the water resources of the basin will not be subject to further review or action by the Commission. The Executive Director shall notify the sponsor of the project, the agency of the signatory party reviewing the project, and the governing body of the municipality, and the planning board of the county in which the project is located of his initial determination on the question of substantial effect. Notice to such interested parties shall be given by certified mail, return receipt requested. The Executive Director shall also notify by regular mail all members of the Commission and of the Federal Field Committee. He shall also cause to be published in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the Executive Director's initial determination, it shall become final ten days after publication as above. Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the Executive Director by letter for reconsideration. Following such reconsideration, if requested, the Executive Director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his final determination. Any such party may appeal such final determination to the Commission by notice in writing served upon the Executive Director within 14 days after the service of the

Executive Director's decision upon reconsideration. The Commission will determine such appeal at a regular meeting thereafter.

[39 FR 25474, July 11, 1974, as amended at 42 FR 15311, Mar. 21, 1977; 43 FR 38816, Aug. 31, 1978; 55 FR 52168, Dec. 20, 1990; 56 FR 30502, July 3, 1991; 56 FR 37954, Aug. 9, 1991; 57 FR 60470, Dec. 21, 1992; 57 FR 59908, Dec. 17, 1992; 59 FR 11458, Mar. 10, 1994]

§ 401.36 Water pollution control projects—regional requirements.

(a) The use of regional solutions to water pollution problems, with the least number of separate treatment plants which may be efficient in the particular circumstance, is required whenever feasible. Each waste treatment project shall be submitted to the Commission not later than the completion of preliminary engineering for review of its compliance with this and other requirements of the Comprehensive Plan.

(b) In reviewing a project for compliance with this section, the Commission will consider the following matters, comparing regional versus separate treatment systems:

- (1) Construction costs and economies of various scales of development.
- (2) Operating costs and economies of various scales of operation.
- (3) Capability of handling industrial wastes with and without pretreatment.
- (4) Capability to assimilate high peak flows and temporary shock loads or emergency conditions.
- (5) Space and facilities for sludge disposal.
- (6) Personnel skills required and their availability for operation and supervision.
- (7) Capacity to absorb growth, and the relative times required to place a separate and a regional system in operation.
- (8) Desirability of the site selection alternatives for the treatment plant in view of considerations of efficiency of land use, potential service area and relative transmission distances.
- (9) The effect for a reasonable distance downstream on the quality of the receiving waters.
- (10) Effectiveness of the proposal in identifying all sources of pollution and in achieving a coordinated, comprehensive and orderly plan for abatement of pollution in the region.

sive and orderly plan for abatement of pollution in the region.

(c) A preliminary engineering report shall accompany each application and shall include factual findings and conclusions with respect to paragraphs (b)(1) through (8) of this section.

(d) For the purpose of the regulations in this part, a *region* is defined to mean one or more drainage areas or parts thereof. A *regional solution* is one which is based upon a feasibility study of the region for which a single system of sewage collection and treatment would be physically and economically feasible.

§ 401.37 Siting studies for major electric generation projects.

(a) An application under section 3.8 of the Compact for approval of an electric generating project with a design capacity of 100,000 KW or more shall include as part of the application: (1) A master siting study, (2) a site selection analysis for the project, and (3) the environmental statement otherwise required.

(b)(1) The master siting study shall describe in general terms all existing major electric generating projects of the applicant and of other public utilities using the water resources of the basin, and all such projects proposed or planned for the ensuing 15-year period. The master siting study shall describe particularly the impact of each proposed project on the water resources and related land resources of the basin. It shall include, with as much detail as is available, a description of the five-mile reach of any stream within which each proposed project is or will be located, the concept, capacity and fuel source of each project, the quantity and method of heat and moisture dissipation, the water resource requirements and water-related ecological effects of each proposed project in the study.

(2) The master siting study will be reviewed by the Commission in relation to the Comprehensive Plan, may be employed as an input to the Comprehensive Plan, and may be considered, in whole or in part, for inclusion in the Plan. A master siting study may

be amended from time to time to reflect changing power demands, technology and water resource conditions. The Commission will act in relation to a master siting study or amendment thereof only after public hearing.

(c) The site selection analysis shall demonstrate the relationship of the proposed project, and its specific location, to the master siting study. Prior to submitting the site selection analysis, the applicant shall circulate it for comment among other interested public utilities, the Federal and State governmental agencies having jurisdiction over the siting of electric generating stations in the State in which the project is located, regional or county planning commissions having jurisdiction in the project area, and such major water users as the Commission shall designate, and such comments shall be appended to and submitted together with the application. Prior to acting on the application, the Commission will make the site selection analysis available for public review and comment.

(d) The Commission will review each application for a major electric generating project with reference to the doctrine of equitable apportionment, including such priority of uses as will recognize alternative water resources and sites for electric generating projects, the increasing demands on the water resources of the basin and the optimum beneficial use of the water resources of the basin.

(e) The Commission will not act upon an application for approval under section 3.8 of the Compact to initiate a partial or preliminary phase of an electric generating project which is subject to the regulations in this part unless the application conforms to requirements of paragraph (a) of this section.

§ 401.38 Water supply projects—conservation requirements.

Maximum feasible efficiency in the use of water is required on the part of water users throughout the basin. Effective September 1, 1981 applications under section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water conserving practices and technology designed to mini-

mize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawals from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water conserving devices and procedures;

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to paragraph (a) of this section shall be subject to any applicable limitations of public utility regulations of the signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water sources in excess of an average of one million gallons per day shall contain (1) a report of the water conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and (2) a contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan estimate the impact of the water

conservation measures upon consumptive and non-consumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

[46 FR 25439, May 7, 1981]

§ 401.39 Sequence of approval.

A project will be considered by the Commission under section 3.8 of the Compact either before or after any other State or Federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.40 Form of referral by State or Federal agency.

Upon approval by any State or Federal agency of any project reviewable by the Commission under this part, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.41 Form of submission of projects not requiring prior approval by State or Federal agencies.

Where a project does not require approval by any other State or Federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) *Exhibits to accompany application.* The application shall be accompanied by the following exhibits:

(1) Abstract of proceedings authorizing project, where applicable.

(2) General map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal.

(3) Section of the United States Geological Survey topographic map showing the territory and watershed affected.

(4) Maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project.

(5) Written report of the applicant's engineer showing the proposed plan of operation of a structural project.

(6) Map of any lands to be acquired or occupied.

(7) Estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out.

(8) A description of the construction procedures to be followed in excavating, backfilling, retention of sediment, reseeding and landscaping, all with particular reference to minimizing soil erosion and sedimentation in the stream.

(b) *Letter of transmittal.* The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addresses of

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the applicant's engineer and counsel, if any.

(c) *Number of copies.* Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies or photographic prints or reproductions may be used.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.42 Preliminary action; informal conference; emergencies.

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal conference may be scheduled to explain, supplement or review an application.

(b) The appropriate agency of a signatory party shall perform a technical review for the Commission, in accordance with Administrative Agreement, of each project finally determined to have a substantial effect on the water resources of the basin; except that the Commission staff will perform the technical review:

(1) Whenever the agency of the signatory party is itself the sponsor, or

(2) Whenever the agency of the signatory party does not have the necessary regulatory jurisdiction, or

(3) Upon request of the agency of the signatory party; and

(4) As to those projects which are subject to an environmental assessment or environmental impact statement under these Rules of Practice and Procedure and the National Environmental Policy Act.

(c) Upon completion of its technical review, the agency of the signatory party shall, in accordance with Administrative Agreement, prepare and file with the Executive Director an action report with respect to the project. The Executive Director shall prepare a memorandum of comment stating his concurrence or nonconcurrence with the findings and recommendations of the action report. The report, memorandum, and a proposed docket decision with reference thereto shall be placed before the Commission by the Executive Director at its next regular

meeting. Whenever time permits, a copy of the proposed docket decision shall be furnished to the applicant, and the applicant shall be given an opportunity to comment thereon and to consent to the conditions stated therein, before action by the Commission. The Commission will act upon the project in accordance with Section 3.8 and Article 11 of the Compact (to the extent applicable).

(d) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in this part.

[39 FR 25474, July 11, 1974, as amended at 42 FR 15311, Mar. 21, 1977. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.43 Hearings.

(a) The Executive Director may, and whenever any substantial objection is filed pursuant to this section shall, cause a hearing to be scheduled upon an application received under § 401.41. He may, and at the request of the applicant shall, cause a hearing to be scheduled as to any application referred under § 401.40. Notice of the intention of the Commission to act upon an application received pursuant to § 401.41, or upon a request for a hearing with regard to an application received pursuant to § 401.40, shall be published by the Executive Director in one or more newspapers of general circulation in the area affected, at least once a week for two successive weeks, which publications shall not be less than seven nor more than 21 days prior to the date on which action is proposed to be taken. Such notice shall direct any person objecting to the application to file his objection with the Commission not later than two days before the

scheduled date of action. If the Executive Director determines that any filed objection is substantial, he shall defer consideration by the Commission, furnish a copy of each such objection to the applicant, and schedule a hearing on the application to be held not less than ten nor more than 30 days after the last day for filing objections. Notice of the hearing shall be served forthwith by certified mail upon the applicant and each person filing a substantial objection. Proof of such publication and of service of notice shall be filed with the Commission on or before the date for which the hearing is scheduled.

(b) The application and supporting documents, maps and data, as filed or amended shall be open to inspection by any interested person prior to the hearing.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.44 Objections.

Every objection filed pursuant to § 401.43 shall be in writing and shall particularly specify the ground thereof. Amendments to the objections may be permitted by the Commission. All objections and supporting documents shall be filed in duplicate in such form as the Executive Director may prescribe. No person may be heard in opposition to an application except on objections so filed. Such objections shall be heard and determined under the procedure prescribed by Subpart F, Hearings.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.45 Limitation of approval.

Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.46 Certificate of compliance.

The Executive Director, upon application duly made to him, and after appropriate inspection and such other proof as may be required, may certify to any applicant that the applicant has duly complied with the requirements of any action or determination by the Commission pursuant to this part. The Executive Director may make such certification whenever he finds and determines that there has been sufficient compliance to satisfy the purposes and objectives of the Commission's action or determination notwithstanding the existence of any technical variation or omission in the work done. All such certifications shall be reported to the Commission at its next meeting thereafter.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

Subpart D—Preparation and Processing of Environmental Impact Statements

§ 401.51 Scope.

(a) *Purpose.* The National Environmental Policy Act of 1969 implemented by Executive Order 11514, mandates that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals. Section 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies." Section 102(2)(C) of the Act and the Council on Environmental Quality's Guidelines of April 23, 1971, (36 FR 7724) require that all Federal agencies prepare environmental statements on all major Federal actions significantly affecting the quality of the human environment. The objective of the Act is to build into the agency decision-making process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed actions and to assist agencies in implementing the policies as well as the letter of the Act.

(b) *Policy.* The Delaware River Basin Commission will, in consultation with other appropriate Federal, State and

local agencies and the public, assess the environmental impacts of any proposed action concurrent with initial technical and economic studies in order that adverse effects will be avoided, and environmental quality will be maintained, restored or enhanced, to the fullest extent practicable. In particular, alternative actions that will minimize adverse impacts will be explored and both the long and short-range implications to man, his physical and social surroundings, and to nature, will be evaluated in order to avoid, to the fullest extent practicable, undesirable consequences as they relate to the quality of the human environment. This assessment shall take place as early as possible and in all cases prior to any decision that may significantly affect the environment and, where required, a draft environmental impact statement will be prepared and circulated in accordance with the regulations in this part.

(c) *Definitions.* *Action* is a resolution by the Commission approving, disapproving, modifying or otherwise disposing of a project, program, legislation or any part thereof.

Applicant is proposed action's sponsor, including the Commission when it sponsors an action.

Environment for the purposes of the regulations in this part is the major natural, man-made or affected environment as implied by the National Environmental Policy Act of 1969.

Environmental assessment is an analysis by the Commission prior to the preparation of an environmental impact statement, of an applicant's environmental report or of a Commission-sponsored action to determine whether the action proposed will have a significant effect involving the quality of the human environment.

Environmental impact statement is a document prepared by the Commission which identifies and analyzes in detail the environmental impacts of a major action by the Commission having significant effects involving the quality of the human environment.

Environmental report is a document to be submitted by applicants proposing an action which requires an environmental assessment.

Negative declaration is a determination by the Executive Director, based upon an environmental assessment, that a proposed action will not require an environmental impact statement.

Notice of intent is an announcement to other Federal, State and local agencies and to the public that the Commission will be preparing an environmental impact statement for a given action.

Responsible official is the Executive Director or his designee of the Delaware River Basin Commission.

Significant effect is that degree of impact upon the quality of the human environment determined by the Commission or the Executive Director as sufficient to justify an environmental impact statement.

§ 401.52 Actions requiring an environmental report.

The applicant for any action within the following classifications shall submit not later than the completion of preliminary engineering or feasibility studies, an environmental report.

(a) All action required by the regulations in this part to include an environmental impact statement.

(b) Major actions the Commission may wish to initiate.

(c) Action to include in the Commission's Comprehensive Plan the following:

(1) Major policy or regulations significantly affecting the quality of the human environment.

(2) Master plans including a sequence of the contemplated projects which together may have a significant effect upon the quality of the human environment.

(d) When requested by the Executive Director based upon an environmental review of the action.

§ 401.53 Applicant's environmental report.

Upon receipt of the report, the Executive Director shall prepare an environmental assessment of the action. Additional information, studies, maps, etc., may be requested from the applicant. The environmental assessment will be the basis for the determination

of the need for an environmental impact statement. A supplemental guideline covering the substantive contents of an environmental report will be made available to all applicants. In brief, an environmental report will include the following:

(a) A description of the proposed action, including the decision-making process, discussing alternatives to illustrate why the proposed action was chosen.

(b) A description of the existing environmental setting without the proposed action.

(c) The probable anticipated environmental impact primary and secondary, including both beneficial and unavoidable adverse effects from the proposed action and the basis for the conclusion. Resources irreversibly and irretrievably committed should be identified.

(d) All reasonable alternatives to the proposed action that have been considered including that of no action.

(e) An evaluation of environmental benefits, costs and risks, including short-term uses versus long-term productivity, weighing the proposed action and the alternatives considered against the quality of the human environment.

(f) Any other information, data, maps, charts, etc., which may be requested by the Commission for use in their analysis of the proposed action.

§ 401.54 Environmental assessment.

An environmental review will be made for those actions requiring an environmental report. The assessment is made to identify and evaluate the expected and potential environmental impacts of the action and the alternatives considered. The assessment will determine whether significant impact upon the environment can be anticipated from the proposed action. The results of an environmental assessment will be either the preparation of the environmental impact statement or a negative declaration. The contents of an environmental assessment will include the following:

(a) Description of the project.

(b) Analysis of significant impacts.

(c) Summation of any objections.

(d) Agencies consulted and their concerns, if any, including interested State, regional, county and local agencies. The Environmental Protection Agency will be consulted in all instances.

(e) Conclusions.

§ 401.55 Negative declaration.

(a) A negative declaration may be issued by the Executive Director prior to taking any official action on a project which, as a result of an environmental assessment (§ 401.54), has been determined will not cause significant environmental impacts. The assessment will become a part of the project's records and be available for public inspection.

(b) Prior to the issuance of a negative declaration, the Executive Director shall publish notice of his intent to do so unless good cause to proceed with an environmental impact statement is submitted in writing by any interested person or agency within 15 days from the date of the notice publication.

(c) The negative declaration will include the environmental assessment, copies of any relevant correspondence and the official determination by the Executive Director that the proposed action is not a major action significantly affecting the quality of the human environment.

(d) Once a negative declaration has been made, the proposed project may immediately proceed to Commission action.

(e) When a negative declaration has been made for a proposed action ordinarily requiring the preparation of an environmental impact statement under the provisions of § 401.56, the declaration, complete with the environmental assessment, will be made available to the public.

§ 401.56 Actions requiring an environmental impact statement.

The list of general classifications which require an environmental impact statement is based upon the reviewable projects activity of the Commission. These actions have been identified by an analysis of environmental impacts typically associated with the principal types of Commission action. Where an environmental impact statement is

prepared for a master plan or program having a chain of contemplated projects, subsequent statements on major components will be required only where significant impacts were not adequately evaluated in the overview statement relating to the total plan or program. Inclusion of the action in the Comprehensive Plan prior to January 1, 1970, does not exempt the action from an environmental impact statement. Actions identified as requiring an environmental impact statement include the following:

- (a) Any project, plan, regulation or policy identified via the process of an environmental assessment as having significant effect upon the quality of the human environment.
- (b) Major large-scale programs or master plans involving a sequence of contemplated projects including new towns, watershed programs, wastewater and water supply plans and recreation plans.
- (c) Impoundments.
- (d) Diversions.
- (e) Fossil-fueled electric generating stations.
- (f) Liquid petroleum products pipelines.
- (g) Draining or filling or otherwise altering marshes or wetlands.
- (h) Substantial encroachments upon a stream or upon the 100-year flood plain of the Delaware River or its tributaries.
- (i) Any other action which the Executive Director, in his discretion, determines is a major action which may have a significant effect upon the quality of human environment and/or environmental impact which is substantially controversial.

§ 401.57 Lead agency.

The Executive Director shall review the proposed action with other Federal agencies to determine whether DRBC should be lead agency for the preparation of the environmental impact statement. Cooperative and/or joint agency efforts will be taken whenever practicable. When any action requiring an environmental impact statement under the regulations in this part is also required to have an environmental impact statement by regulations of another Federal agency, the Executive

Director will consult with such agency and establish appropriate lead agency arrangements that will meet the requirements of the National Environmental Policy Act and the revised (June 1973) Council on Environmental Quality Guidelines, to avoid duplication. If another Federal agency, in its role as lead agency, has determined that, after an environmental assessment, any project listed in the regulations in this part does not require an environmental impact statement, the Executive Director shall request from the lead agency a letter to that effect and after a review of the project may exempt the project from this section.

§ 401.58 Early notice.

Once the determination has been made that a project requires an environmental impact statement, a public announcement, hereinafter called Notice of Intent, shall be issued to the Council on Environmental Quality, appropriate Federal, State and municipal agencies, and be publicly posted in the Commission headquarters. The Notice of Intent shall also be sent to citizens and citizens organizations identified as having an interest in the project. The Notice of Intent shall define the Commission as lead agency and request comments which may be helpful in the preparation of the draft statement. A current list of administrative actions for which environmental impact statements is being prepared and will be available for public inspection upon request.

§ 401.59 Pre-draft consultation with appropriate agencies.

(a) *Consultation with Federal agencies.* When the Commission is considering an action requiring an environmental impact statement, it will, prior to the preparation of the draft statement, consult with Federal agencies having jurisdiction over reasonable alternatives to the proposed action or jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action and reasonable alternatives.

(b) *Consultation with State and local agencies.* In every case in which implementation of the proposed action or its reasonable alternatives would require

exercise of authority by a State or local agency, that agency will be consulted prior to the preparation of the draft statement. Use will be made of the State and local A-95 clearing-houses.

§ 401.60 Draft environmental impact statement.

The Executive Director shall prepare a substantive draft environmental impact statement as soon as practicable after the decision that the statement is necessary. Where a plan or program has been developed, the relationship between the plan and the subsequent projects or phases encompassed by it shall be evaluated to determine the preferable and most meaningful point in time for preparing a statement. Where practicable the statement will be drafted for the total program at the completion of the overall planning stage. Individual actions included in the plan will not require separate statements except where significant change has occurred. A supplemental statement will be issued covering only that change. The discussion of alternatives to the proposed action and their impact on the environment will accompany the proposed action through the Commission's entire review process. Generally the content of an environmental impact statement will include the following: (Substantive description of the content is available in supplemental guidelines upon request).

- (a) Summary.
- (b) Description of the proposed action, statement of its purpose and its components in detail commensurate for an assessment of potential environmental impact.
- (c) A succinct description of the environmental setting without the proposed action.
- (d) The relationship of the proposed action to water and land use plans, policies and controls for the affected area.
- (e) The probable impact of the proposed action on the environment, beneficial and adverse, including secondary or indirect, as well as primary or direct, consequences.
- (f) Any probable adverse environmental effects which cannot be avoided,

summarizing those effects discussed in paragraph (e) of this section that are adverse and unavoidable.

(g) All reasonable alternatives to the proposed action that have been considered including that of no action, with an objective evaluation of the environmental impacts from each.

(h) An evaluation of the proposed action in relation to short-term use of man's environment and the maintenance and enhancement of long-term productivity.

(i) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

(j) An indication of other interests and considerations of Federal policy thought to offset the adverse environmental effects of the proposed action.

(k) When determined by the Executive Director as necessary, an evaluation of environmental benefits, costs and risks of the proposed action compared to the alternatives considered against the quality of the human environment.

§ 401.61 Processing the draft environmental impact statement.

(a) The Executive Director shall distribute ten copies of the draft environmental impact statement and two completed National Technical Information Service (NTIS) accession notice cards to the Council on Environmental Quality.

(b) The Executive Director shall announce to other agencies and the general public via the FEDERAL REGISTER and in accordance with other chapters and sections of the Administrative Manual, both the availability of the draft environmental impact statement and the date of a public hearing on environmental factors which will be held not less than 15 days after the draft environmental impact statement has been made available to the public.

(c) Concurrent with the announcement of availability, the Executive Director shall provide copies of the draft environmental impact statement to the Environmental Protection Agency and to appropriate field offices of reviewing Federal agencies that have special expertise or jurisdiction by law with respect to any impacts involved

as listed in Appendix II of the Council on Environmental Quality's guidelines. At the same time, copies shall also be provided to the appropriate State and local agencies and to interested organizations and persons.

(d) All comments made upon the draft environmental impact statement should be submitted to DRBC within 45 days after the date of publication in the FEDERAL REGISTER announcing the availability of the draft. Extensions of review time will be at the discretion of the Executive Director.

§ 401.62 Final environmental impact statement.

Following receipt of comments on the draft environmental impact statement and public hearing, the Executive Director shall prepare a final environmental impact statement responding to written and/or recorded suggestions, criticisms and comments raised through the review of the draft statement. Distribution will be to the Council on Environmental Quality, the Environmental Protection Agency and those who respond to the draft statement and to written requests.

§ 401.63 Public availability of statements.

All draft and final environmental impact statements, including comments received thereon, shall be available for public examination as per the Freedom of Information Act in the Commission's offices and such other offices as the Executive Director may designate.

§ 401.64 Earliest date for Commission action.

As directed by the Commission, the Executive Director will forward the final environmental impact statement to the Council on Environmental Quality. The Commission will act upon a project that is subject to the requirements of this section not less than 90 days after a draft environmental impact statement has been released for public comment and not less than 30 days (which may run concurrently within the 90 days) after the final environmental impact statement has been received by the Council on Environmental Quality. The Commission will include or refer to the environmental

assessment or the environmental impact statement, and will make specific findings and conclusions with respect to the environmental effects of the project.

§ 401.65 Emergency circumstances.

In the event of emergency circumstances those projects requiring an environmental impact statement as provided for in § 401.42, the Executive Director will consult with the Council on Environmental Quality with respect to waiver, suspension or deferment of the requirements of this subpart before any action is taken.

§ 401.66 Adequacy of draft and final environmental impact statements.

The draft and final environmental impact statements will represent the Commission's independent evaluation of the environmental impacts of the action and the appropriate alternatives to the proposed action. Redraft statements will be prepared if, prior to the submission of a final statement to the Council on Environmental Quality, the original draft is inadequate because significant information relevant to the total action was omitted from the original draft or only came to light after circulation of the original draft. All redraft statements shall be circulated for comment in the same manner as original draft environmental impact statements.

§ 401.67 Procedure for commenting upon environmental impact statements.

(a) Comments prepared on draft environmental impact statements authored by other agencies will be based upon the relationship of the action proposed to the Commission's Comprehensive Plan.

(b) Comments will be organized consistent with the structure of the draft statement and will be as specific, substantive and factual as possible.

(c) Five copies of all comments made thereon will be furnished to the Council on Environmental Quality.

Subpart E—Review in Water Quality Cases

§ 401.71 Scope.

This subpart shall apply to the review, hearing and decision of objections and issues arising as a result of administrative actions and decisions taken or rendered under the Basin Regulations.

§ 401.72 Notice and request for hearing.

The Executive Director shall serve notice of an action or decision by him under the Basin Regulations by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for such a hearing shall be filed with the Secretary of the Commission not more than 20 days after service of the Executive Director's determination. Failure to file such a request within the time limited shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

§ 401.73 Form of request.

A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

§ 401.74 Report.

Whenever the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 20 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the per-

son or entity filing the request for hearing at the place indicated in the request.

§ 401.75 Form and contents of report.

(a) *Generally.* A request for a report under this subpart may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) *Waste loading.* In cases involving objections to an allocation of the assimilative capacity of a stream, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any inplant control or recovery process for which credit is claimed;

(5) An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Basin Regulations, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

(6) Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as

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to represent adequately the strength and volume of waste that is discharged; and

(7) Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

§ 401.76 Protection of trade secrets; confidential information.

No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by these Rules shall be confidential for the purposes of section 1905 of Title 18 of the United States Code which provides:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association, or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948. C.645, 62 Stat. 791.

§ 401.77 Failure to furnish report.

The Executive Director may, upon five days' notice to the objector, dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

§ 401.78 Informal conference.

Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow

the ground or grounds of the objections.

§ 401.79 Consolidation of hearings.

Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

Subpart F—Conduct of Hearings

§ 401.81 Hearings generally.

(a) *Scope of subpart.* This subpart shall apply to hearings required for the purposes of subparts C and D of this part and, to the extent applicable, to the conduct of administrative hearings for which no other provision is made by statute or regulation.

(b) *Timely request.* Any person aggrieved by any action or decision of the Executive Director taken under any Basin Regulation shall be entitled, upon timely filing of a request therefor, to a hearing in accordance with these regulations.

(c) *Optional joint hearings.* Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a hearing officer designated pursuant to this subpart may serve as a hearing officer, examiner or agent pursuant to such additional designation. The hearing officer may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a hearing officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the hearing officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other

than the Delaware River Basin Compact).

(d) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a "hearing docket" which shall be posted in public view at the office of the Commission.

§ 401.82 Hearing officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the chairman may designate, except as provided in paragraph (b) of this section.

(b) *Wasteload allocation cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a hearing officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the chairman.

§ 401.83 Hearing procedure.

(a) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, and to hold conferences for the settlement or simplification of issues.

(b) The hearing officer shall cause each witness to be sworn or to make affirmation.

(c) Any party to a hearing shall have the right to present evidence and to examine and cross-examine witnesses.

(d) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(e) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall

not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received.

(f) Any person entitled to be heard may appear and be heard in person or be represented by an attorney at law or, if the applicant is a corporation, by its corporate officer, an authorized employee, or by an attorney at law.

(g) Briefs and oral argument may be required by the hearing officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the hearing officer.

§ 401.84 Staff and other expert testimony.

(a) The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) A party to the hearing may submit the testimony of an expert witness, to be made part of the record, whether or not the expert is present, provided that such testimony has been reduced to writing, sworn, and copies thereof distributed to all parties appearing at the hearing. Such testimony, however, shall not be admitted whenever the expert is not present and available for cross-examination at the hearing unless the testimony shall have been made available to all parties of record at least five days prior to the hearing and all parties have waived the right of cross-examination.

§ 401.85 Record of proceedings.

A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the hearing officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other person

who desires copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

§ 401.86 Assessment of costs.

(a) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the hearing officer to the applicant. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(b) Upon the scheduling of a matter for adjudicatory hearing, the Secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

[42 FR 15310, Mar. 21, 1977]

§ 401.87 Findings and report.

The hearing officer shall prepare a report of his findings and recommendations. In the case of an objection to a wasteload allocation, the hearing officer shall make specific findings of a recommended allocation of carbonaceous oxygen demand, which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the hearing officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

[39 FR 25474, July 11, 1974. Redesignated at 42 FR 15310, Mar. 21, 1977]

§ 401.88 Action by the Commission.

The Commission will act upon the findings and recommendations of the hearing officer pursuant to law. The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the hearing officer, objections, thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. Subject to the provisions of section 2-4.6, all such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

[39 FR 25474, July 11, 1974. Redesignated at 42 FR 15310, Mar. 21, 1977]

Subpart G—Penalties and Settlements in Lieu of Penalties

SOURCE: 52 FR 37602, Oct. 8, 1987, unless otherwise noted.

§ 401.91 Scope of subpart.

This subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

§ 401.92 Notice to possible violators.

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these rules and section 14.17 of the Compact.

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The notice to the possible violator shall:

(a) Set forth the date on which the possible violator shall respond; and

(b) Set forth any information to be submitted or produced by the possible violator.

§ 401.93 The record for decision-making.

(a) *Written submission.* In addition to the information required by the Commission, any possible violator shall be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the Commission's Compact or its rules, regulations and orders.

(b) *Presentation to the Commission.* At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

§ 401.94 Adjudicatory hearings.

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to § 401.93 at which testimony may be presented and documents received shall not be scheduled unless:

(1) The Executive Director determines that a hearing is required to have an adequate record for the Commission; or

(2) The Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in section

18 CFR Ch. III (4–1–97 Edition)

14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this subpart adjudicatory hearings shall be conducted in accordance with the provisions of §§ 491.83 through 401.88 (including § 401.86 *et seq.*).

§ 401.95 Assessment of a penalty.

The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to § 14.17 of the Compact. If it is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.

§ 401.96 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty:

(1) Previous violation, if any, of the Commission's Compact and regulations;

(2) Whether the violation was unintentional or willful and deliberate;

(3) Whether the violation caused adverse environmental consequences and the extent of any harm;

(4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations;

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and

(6) Whether the failure to comply with the Commission's Compact and regulations was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section,

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extenuating circumstances justify such action.

§ 401.97 Enforcement of penalties.

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to §14.17 of the Compact.

§ 401.98 Settlement by agreement in lieu of penalty.

A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided. If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this subpart.

§ 401.99 Suspension or modification of penalty.

The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

Subpart H—Public Access to Records and Information

AUTHORITY: Pub. L. 93-502, as amended.

SOURCE: 40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

§ 401.101 Policy on disclosure of Commission records.

The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

§ 401.102 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

§ 401.103 Request for existing records.

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

(b) Records or documents prepared by the Commission for routine public distribution, e.g., pamphlets, speeches, public information and educational materials, shall be furnished free of charge upon request as long as the supply lasts. The provisions of this part shall not be applicable to such requests.

(c) All existing Commission records are subject to routine destruction according to standard record retention schedules.

§ 401.104 Preparation of new records.

The Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the

Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

§ 401.105 Indexes of certain records.

(a) Indexes shall be maintained, and revised at least quarterly, for the following Commission records:

(1) Final opinions and orders made in the adjudication of cases.

(2) Statements of policy and interpretation adopted by the Commission and still in force and not published in the FEDERAL REGISTER or official minutes of Commission meetings.

(3) Administrative staff manuals and instructions to staff that affect members of the public.

(b) A copy of each such index is available at cost of duplication from the FOIA Officer.

§ 401.106 FOIA Officer.

The Executive Director shall designate a Commission employee as the FOIA Officer. The FOIA Officer shall be responsible for Commission compliance with the Freedom of Information Act and these regulations. All requests for agency records shall be sent in writing to:

FOIA Officer
Delaware River Basin Commission
P.O. Box 360
Trenton, N.J. 08603

§ 401.107 Permanent file of requests for Commission records.

The Commission shall maintain a permanent file of all requests for Commission records and all responses thereto, including a list of all records furnished in response to a request. This file is available for public review during working hours.

§ 401.108 Filing a request for records.

(a) All requests for Commission records shall be filed in writing delivered to the FOIA Officer, or by mailing it to the Commission. The Commission will supply forms for written requests.

(b) A request for Commission records shall reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details

that will help identify the records sought. A person requesting disclosure of records shall be permitted an opportunity to review them without the necessity for copying them where the records involved contain only disclosable data and information.

(1) If the description is insufficient to locate the records requested, the FOIA Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

(2) Every reasonable effort shall be made by the staff to assist in the identification and location of the records sought.

(3) In any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Commission, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records.

(c) Upon receipt of a request for records, the FOIA Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.99(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(d) A denial of a request for records, in whole or in part, shall be signed by the FOIA Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in a letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

§ 401.109 Time limitations.

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the FOIA Officer pursuant to § 401.98(c). An oral request

for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the FOIA Officer and is logged in accordance with §401.98(c). A request that is expected to involve fees in excess of \$50 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on his request.

(b) Within ten (10) working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged by the FOIA Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the letter shall so state.

(2) If all of the records have not been located or a final determination has not yet been made with respect to disclosure of all of the records requested, the letter shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) In the following unusual circumstances, the time for sending this letter may be extended by the Executive Director for up to an additional ten (10) working days by written notice to the person making the request setting forth the reasons for such extension and the time within which a determination is expected to be dispatched:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission's Headquarters.

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determina-

tion of the request or among two or more components of the Commission having substantial subject-matter interest therein.

(c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within thirty (30) days from receipt of the FOIA Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or his designee shall make a determination and notify the appellant of his determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its next regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

(d) If the request for records will result in a fee of more than \$25, determination letter under §401.99 shall specify or estimate the fee involved and may require prepayment, as well as payment of any amount not yet received as a result of any previous request, before the records are made available. If the fee is less than \$25, prepayment shall not be required unless payment has not yet been received for records disclosed as a result of a previous request.

(e) Whenever possible, the determination letter required under §401.99(b), relating to a request for records that involves a fee of less than \$25.00, shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter. For requests for records involving a fee of more than \$25.00, the

records shall be forwarded as soon as possible after receipt of payment.

§ 401.110 Fees.

(a) Unless waived in accordance with the provisions of § 401.101, the following fees shall be imposed for disclosure of any record pursuant to this part.

(1) *Copying of records.* Fifteen cents per copy of each page.

(2) *Clerical searches.* \$1 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(3) *Nonclerical searches.* \$1.80 for each one-quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(4) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on an actual cost basis.

(b) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the FOIA Officer.

§ 401.111 Waiver of fees.

(a) No fee shall be charged for disclosure of records pursuant to this part where:

(1) The records are requested by a congressional committee or subcommittee or the General Accounting Office.

(2) The records are requested by an agency of a signatory party.

(3) The records are requested by a court of competent jurisdiction.

(4) The records are requested by a state or local government having jurisdiction thereof.

(b) No fee shall be charged if a record requested is not found or for any record that is totally exempt from disclosure.

§ 401.112 Exempt information.

The following materials and information covered by this part shall be exempt from disclosure; that is, information that is:

(a) Related solely to the internal personnel matters of the Commission;

(b) Specifically exempted from disclosure by statute;

(c) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. (For purposes of this section a trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. Commercial or financial information that is privileged or confidential means valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.)

(d) Inter-agency or intra-agency memorandums or letters other than purely factual compilations, which would not be available by law to a party other than an agency in litigation with the Commission;

(e) Personnel and medical files and similar files and disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(f) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

§ 401.113 Segregable materials.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this part, except as provided in § 401.92.

§ 401.114 Data and information previously disclosed to the public.

Any Commission record that is otherwise exempt from public disclosure pursuant to this part is available for public disclosure to the extent that it contains data or information that have

previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

§ 401.115 Discretionary disclosure by the Executive Director.

(a) The Executive Director may, in his discretion, disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part. The Executive Director shall exercise his discretion to disclose such records whenever he determines that such disclosure is in the public interest, will promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.98, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director to exercise his discretion to disclose any other record that is exempt from disclosure.

§ 401.116 Disclosure to consultants, advisory committees, State and local government officials, and other special government employees.

Data and information otherwise exempt from public disclosure may be disclosed to Commission consultants, advisory committees, state and local government officials, and other special government employees for use only in their work in cooperation with the Commission. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Commission employee.

§ 401.117 Disclosure to other Federal government departments and agencies.

Any Commission record otherwise exempt from public disclosure may be disclosed to other Federal Government

departments and agencies, except that trade secrets may be disclosed only to a department or agency that has concurrent jurisdiction over the matter and separate legal authority to obtain the specific information involved. Any disclosure under this section shall be pursuant to an agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Commission.

§ 401.118 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Commission administrative or court proceedings where the data or information are relevant. The Commission will request that the data or information be held in camera and that any other appropriate measures be taken to reduce disclosure to the minimum necessary under the circumstances.

§ 401.119 Disclosure to Congress.

All records of the Commission shall be disclosed to Congress upon an authorized request.

Subpart I—General Provisions

SOURCE: 40 FR 14059, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

§ 401.121 Definitions.

For the purposes of this part, except as the context may otherwise require:

(a) All words and phrases which are defined by section 1.2 of the Compact shall have the same meaning herein.

(b) Words and phrases which are defined by part I of the Administrative Manual (section 1-3) shall have the same meaning for the purposes of this part 401.

(c) *Application* shall mean a request for action by the Commission in any written form, including without limitation thereto, a letter, referral by any agency of a signatory party, or an official form prescribed by the Commission; provided that whenever an official form of application has been duly required, an application shall not be deemed to be pending before the Commission until such time as such form,

together with the information required thereby, has been completed and filed.

(d) *Applicant* shall mean any sponsor or other person who has submitted an application to the Commission.

(e) *Sponsor* shall mean any person authorized to initiate, construct or administer a project.

§ 401.122 Supplementary details.

Forms, procedures and supplementary information, to effectuate these regulations, may be provided or required by the Executive Director as to any hearing, project or class of projects.

§ 401.123 Waiver of rules.

The Commission may, for good cause shown, waive rules or require additional information in any case.

§ 401.124 Construction.

This part is promulgated pursuant to section 14.2 of the Compact and shall be construed and applied subject to all of the terms and conditions of the Compact and of the provisions of section 15.1 of Pub. L. 87–328, 75 Stat. 688.

**PART 410—BASIN REGULATIONS;
WATER CODE AND ADMINISTRATIVE
MANUAL—PART III WATER
QUALITY REGULATIONS**

AUTHORITY: Delaware River Basin Compact, 75 Stat. 688.

§ 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

(a) The Water Code of the Delaware River Basin is a codification of regulations of the Delaware River Basin Commission concerning the policies and standards applicable to public and private water projects and programs within the Delaware River Basin. Article I of the water code sets forth general policies of the Commission. Article II concerns the conservation, development and utilization of Delaware River Basin water resources. Article III sets forth the water quality standards and guidelines for the Delaware River Basin. The Commission's Administrative Manual—Part III, Water Quality Regulations, apply to all waste dischargers, public and private, using the

waters of the Delaware River Basin. The regulations contained within the Water Code and within the Administrative Manual—Part III Water Quality Regulations of the Delaware River Basin Commission are hereby incorporated in and made a part of this Part 410 and include all amendments to the Water Code and the Administrative Manual—Part III Water Quality Regulations adopted through May 28, 1986.

(b) The Water Code and the Administrative Manual—Part III and the regulations contained therein and information about them may be obtained from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

(c) The regulations may be amended from time to time by the Commission after due notice and public hearing. An official file of changes will be kept for public inspection in the offices of the Commission.

[51 FR 20960, June 10, 1986]

**PART 415—BASIN REGULATIONS—
FLOOD PLAIN REGULATIONS**

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AUTHORITY: Pub. L. 87–328 (75 Stat. 688).

SOURCE: 42 FR 13541, Mar. 11, 1977, unless otherwise noted.